

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,

2008 JAN -8 P 4:02

Plaintiff,

EDWARD P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

V.

MISC NO. 2. 08-mc-3384-WKW

EYEMART EXPRESS LTD,
CARROLLTON, TX,

Garnishee,

DON MOORE,

Defendant.

APPLICATION FOR WRIT OF GARNISHMENT

The United States of America makes application in accordance with 28 U.S.C. Section 3205(b)(1) to the Clerk of the United States District Court to issue a Writ of Garnishment upon the Judgment in Criminal Case No. 92-86-N entered against the defendant, Don Moore; the last four digits of defendant's Social Security Number is XXX-XX-6785; whose last known address is 100 Jackson Street, Wetumpka, Alabama 36092, in the above cited action in the amount of \$28,782.95, plus costs. There is a balance due of \$12,161.49, as of January 8, 2008, plus costs.

Demand for payment of the above-stated debt was made upon the debtor not less than 30 days from January 8, 2008, but defendant

has failed to satisfy this debt.

The Garnishee is believed to owe or will owe money to the judgment debtor, or is in possession of property of the debtor, in which the debtor has a substantial non-exempt interest.

The name and address of the Garnishee or his authorized agent is:

EYEMART EXPRESS LTD
2110 HUTTON DRIVE, STE 100
CARROLLTON, TX 75006

DATED: January 8, 2008

LEURA G. CANARY
UNITED STATES ATTORNEY

BY: 

R. RANDOLPH NEELEY
Assistant United States Attorney
Bar Number: 9083-E56R
Attorney for Plaintiff
Post Office Box 197
Montgomery, AL 36101
Telephone: (334) 223-7280
Facsimile: (334) 223-7201
E-Mail: rand.neeley@usdoj.gov

DEBT COLLECTION NOTICE
POST JUDGMENT

You are hereby notified that this property is being taken by the United States Government, which has a court judgment in the Middle District of Alabama, Case No. _____, for the amount of \$ _____.

In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the Government if you can show that the exemptions apply. You must elect to exempt property listed in either paragraph A or paragraph B.

The first group of exemptions consists of property that is specified in section 522(d) of Title 11 of the United States Code and which consists generally of the following property:

Paragraph A:

1. The debtor's aggregate interest, not to exceed \$18,450 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.
2. The debtor's interest, not to exceed \$2,950 in value, in one motor vehicle.
3. The debtor's interest, not to exceed \$475 in value in any particular item or \$9,850 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.
4. The debtor's aggregate interest, not to exceed \$1,225 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.
5. The debtor's aggregate interest in any property, not to exceed in value \$975 plus up to \$9,250 of any unused amount of the exemption provided under paragraph (1) of this subsection.
6. The debtor's aggregate interest, not to exceed \$1,850 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.
7. Any unmaturred life insurance contract owned by the debtor, other than a credit life insurance contract.

8. The debtor's aggregate interest, not to exceed in value \$9,850 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title [11 USCS § 542(d)], in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.
9. Professionally prescribed health aids for the debtor or a dependent of the debtor.
10. The debtor's right to receive -
 - (a) a social security benefit, unemployment compensation, or a local public assistance benefit;
 - (b) a veterans' benefit;
 - (c) a disability, illness, or unemployment benefit;
 - (d) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
 - (e) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless -
 - (i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;
 - (ii) such payment is on account of age or length of service; and
 - (iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.
11. The debtor's right to receive, or property that is traceable to -
 - (a) an award under a crime victim's reparation law;
 - (b) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(c) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(d) a payment, not to exceed \$18,450, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(e) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

12. Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

OR

Below is a summary of the major exemptions which apply in most situations in the State of Alabama:

Paragraph B:

Major Exemptions Under Federal Law:

1. Social Security benefits and Supplemental Security income (42 U.S.C. §407).
2. Veterans' benefits (38 U.S.C. §3101).
- 2a. Members of armed services (10 U.S.C. §1440, 38 U.S.C. §562).
3. Federal civil service retirement benefits (5 U.S.C. §8346 and 22 U.S.C. §4060(c)).
4. Annuities to survivors of federal judges (28 U.S.C. §376(n))
5. Longshoremen and Harborworkers Compensation Act (33 U.S.C. §916).
6. Black lung benefits (30 U.S.C. §§931(b)(2)(F) and 932(a)).

- 6a. Seaman's, master's or fisherman's wages, except for child support or spousal support and maintenance (46 U.S.C.A. §§1108-1109(a-c).

Exemptions listed in 1 through 6 above may not be applicable in child support and alimony cases.

- 6b. Railroad retirement, pension, unemployment benefits (45 U.S.C. §§231(m), 352(e).

7. Compensation for war risk hazards (42 U.S.C. §1717).

Bankruptcy Code (Title 11, United States Code) which generally provides exemptions for:

8. Homestead or Residential Property - \$5,000 per individual in area not exceeding 160 acres is exempt, subject to certain liens.
9. Personal Property - \$3,000 in personal property, plus all necessary wearing apparel, all family pictures and all family books are exempt.
10. Public Assistance - all public assistance benefits are exempt.
11. Unemployment Compensation - all employee contributions and benefits are exempt.
12. Veterans' Benefits - all bonuses to Southeast Asian War prisoners are exempt.
13. Wages - with respect to consumer loans, consumer credit sales, and consumer leases, debtor may exempt greater of 75% of weekly disposable earnings or 30 times federal minimum wage. In all other cases, 75% of wages are exempt.
14. Workers' Compensation - all employee claims and benefits are exempt.
15. Insurance Benefits - life insurance policy in favor of third party is exempt. An average of \$250 per month of disability is exempt for the whole period of disability. \$250 per month of an annuity is exempt.
16. Military Equipment - all personally owned uniforms, arms and equipment is exempt.
17. Partnership Property - Alabama has adopted the Uniform Partnership Act provision exempting a partner's interest in specific partnership property.

18. Pensions and Retirement Benefits - benefits from various employee pension systems are exempt.
19. Cemeteries and Burial Funds - family burial plots are exempt.
20. Crime Victims' Compensation - all exempt, except child support or costs due creditor included in the award.
21. Fraternal Benefit Society Benefits - all exempt.

If you are not a resident of the State of Alabama, there may be different property exemptions available under the laws of the state in which you reside.

If you are {name of judgment debtor}, you have a right to ask the court to return your property to you if you think the property the Government is taking qualifies under one of the above exemptions [For a default judgment] or if you think you do not owe the money to the United States Government that it says you do.

If you want a hearing, you must promptly notify the court. You must make your request in writing, and either mail it or deliver it in person to the Clerk of the Court at Clerk, U. S. District Court, P. O. Box 711, Montgomery, Alabama 36101. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at U. S. Attorney's Office, P. O. Box 197, Montgomery, Alabama 36101, so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

At the hearing you may explain to the judge why you believe the property the Government has taken is exempt [For a default judgment:] or why you think you do not owe the money to the Government. [For a writ of execution:]. If you do not request a hearing within 20 days of receiving this notice your [property] may be sold at public auction and the payment used toward the money you owe the Government.

If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after you receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the Clerk of the court at Clerk, U. S. District Court, P. O. Box 711, or 15 Lee Street, Montgomery, Alabama 36101. You must also send a copy of your request to the Government at U. S. Attorney's Office, P. O. Box 197, Montgomery, Alabama 36101, so the Government will know you want the proceeding to be transferred.

Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information.

____ I/we request a hearing.

Clerk, U. S. District Court
P. O. Box 711
Montgomery, Alabama 36101

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

2008 JAN -8 P 4:02

UNITED STATES OF AMERICA,
CERESIA RACKETT CL
U.S. DISTRICT COURT)
Plaintiff, (NOT ALA)

V.

MISC NO. 2: 08-mc- 3384-WKW

EYEMART EXPRESS LTD,
CARROLLTON, TX,

Garnishee,

DON MOORE,

Defendant.

TO: EYEMART EXPRESS LTD
2110 HUTTON DRIVE, STE 100
CARROLLTON, TX 75006

INSTRUCTIONS TO THE GARNISHEE

Attached is a Writ of Garnishment requesting that you determine whether or not you have in your possession, custody, or control any of the property or funds of the debtor listed therein, or any other property of the debtor. Title 28, United States Code, Section 3205(c)(2)(E) requires that you file a written Answer within 10 days of your receipt of this Writ with the Court and serve a copy of the Answer upon the debtor and counsel for the United States. You are further required to withhold and retain any property or funds in which the debtor has a substantial non-exempt

interest.

1. AMOUNT GARNISHED. The principal amount, rate of interest, starting date of interest and costs are set out in the Writ of Garnishment or Affidavit served upon you. The amount garnished consists of all of these.

2. AMOUNT WITHHELD. Under federal law, 15 U.S.C. Section 1673(a), you should withhold each pay period:

(a) 25% of disposable earnings each week, or

(b) the amount by which disposable earnings for the week exceeds thirty times the federal minimum hourly wage,

whichever is less.

3. "DISPOSABLE EARNINGS" means that part of earnings remaining after deduction of any amount required by law to be withheld (such as amount of deductions for social security taxes and withholding taxes, but not court ordered alimony and child support payments which must be included in "disposable earnings"). 15 U.S.C. Section 1672(b); First National Bank v. Hasty, 415 F.Supp. 170 (E.D. Mich, 1976), affirmed 573 F.2d 1310 (6th Cir. 1977).

4. DISBURSEMENT OF WITHHELD AMOUNTS. Each pay period, amounts withheld should be remitted to the Office of the United States District Court.

Mail Remittances to: Clerk, U. S. District Court
Middle District of Alabama
Post Office Box 711
Montgomery, Alabama 36101

Your check or money order should be made payable to "Clerk, U. S. District Court." Indicate on each remittance the Name of the case and the Court Number, so that proper credit will be given.

IF YOU FAIL TO ANSWER THIS WRIT OR TO WITHHOLD PROPERTY IN ACCORDANCE WITH THE WRIT, THE COURT MAY MAKE YOU LIABLE FOR THAT AMOUNT OF THE DEBTOR'S PROPERTY WHICH YOU FAILED TO WITHHOLD. ADDITIONALLY, YOU MAY BE HELD LIABLE FOR A REASONABLE ATTORNEY FEE

IF THE UNITED STATES FILES A PETITION TO THE COURT REQUESTING AN EXPLANATION FOR YOUR FAILURE TO COMPLY WITH THIS WRIT.

If you have any additional questions, please call Ms. Marsha Tunnell at (334) 551-1732, or write to: United States Attorney's Office, Financial Litigation Division, Post Office Box 197, Montgomery, Alabama 36101.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

v.

EYEMART EXPRESS LTD,
CARROLLTON, TX,

Garnishee,

DON MOORE,

Defendant.

MISC NO. 2:08-mc-3384-WKW

NOTICE OF GARNISHMENT AND INSTRUCTIONS TO DEBTOR

YOU ARE HEREBY NOTIFIED that a Garnishment was issued based upon a judgment entered against you on May 18, 1992. The Garnishment was served on EYEMART EXPRESS LTD, garnishee, and it is believed that the garnishee may have property of yours in its custody, possession or control.

YOU ARE FURTHER NOTIFIED that, unless within twenty (20) days from the date of receipt of the Answer of the Garnishee, you file a written Objection to explain why you think these funds are exempt from execution under state or federal law and request a hearing, a Court Order will be entered attaching the funds or property and the funds or property will be applied against the Judgment owed the

United States of America.

Any Objection that you file to contest the Garnishment must be filed in the Office of the Clerk of the United States District Court, Middle District of Alabama, at One Church Street, or Post Office Box 711, Montgomery, Alabama 36101. The Objection must state your reasons for believing that this property is not subject to attachment by the United States of America. A copy of the Objection or other pleadings must also be served on: (1) the United States Attorney for the Middle District of Alabama, One Court Square, Suite 201, or Post Office Box 197, Montgomery, Alabama 36101, and (2) Eyemart Express LTD, 2110 Hutton Drive, Ste. 100, Carrollton, TX 75006.

YOU MAY WISH TO CONSULT A LAWYER FOR ADVICE AS TO THE MEANING OF THIS NOTICE.

LEURA G. CANARY
UNITED STATES ATTORNEY

BY: 

R. RANDOLPH NEELEY
Assistant United States Attorney
Bar Number: 9083-E56R
Attorney for Plaintiff
Post Office Box 197
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